

centerforconstitutionalrights

F-2008-00311

(b)(6)

666 broadway new york, ny 10012
t 212 614 6464 f 212 614 6499 www.ccr-ny.org

November 6, 2007

Information and Privacy Coordinator
Central Intelligence Agency
Washington, D.C. 20505.
Fax: (703)613-3007

Re: **REQUEST UNDER FREEDOM OF INFORMATION ACT**

Dear Information and Privacy Coordinator:

This letter constitutes a request pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et. seq.*, and the Department of Defense's implementing regulations, 32 C.F.R. § 286.1 *et seq.* This request is submitted on behalf of the Center for Constitutional Rights ("Requester"). As described in greater detail below, the Requester seeks all records relating to Combatant Status Review Tribunal ("CSRT") proceedings and any other records regarding the classification or treatment of detainee **Majid Khan (Guantanamo ISN #10020 , former "ghost" detainee)** while in Pakistani or U.S. custody or control, and any records concerning the family of Majid Khan.¹ This includes records related to Mr. Khan's detention in Pakistani prison(s), in secret prison facilities under the control of the Central Intelligence Agency, and at Guantánamo Bay Naval Base, Cuba (Guantánamo), as well as any other locations in which he was detained in the custody of or at the behest of Pakistan or the United States.

I. Records Sought

Requester seeks all records which in any way relate to, pertain to, or mention Majid Khan by any or all persons or entities, including all persons acting on behalf of the United States as well as any records which relate to the U.S. and Pakistani-based family of Majid Khan. Without limiting any of the above, Requester specifically seeks all records relating to CSRT proceedings and other records regarding the classification and/or treatment of Majid Khan. This would necessarily entail all records concerning the Government's custody and interrogations of the detainee.

Accordingly Requester seeks the following records:

- 1) Records relating to Combatant Status Review Tribunal ("CSRT") proceedings, or any other classification process pertaining to the detainee, including, but not limited to:

¹ Including, Ali S. Khan (father); Mahmood Khan (brother); Sadia Khan (sister); Wafaa Khan (sister); Gufran Khan (sister); Mohammed Khan (brother); Ahmad Khan (brother), and Rabia Khan (wife).

APPROVED FOR RELEASE DATE:
02-Mar-2011

2007 NOV -9 AM 9:14



- a) Full transcripts of proceedings;
 - b) Full audiotapes or other recordings of proceedings;
 - c) Any decisions or rulings;
 - d) All records, evidence, orders, reports, exhibits, or any other information relating to, used in, or relied upon in reaching the classification;
 - e) All transcripts, testimonies, statements, and communications with witnesses or requested witnesses including, but not limited to, detainee's family and other detainees;
 - f) All records related to any classification processes prior to detainee's transfer to Guantánamo which reached a conclusion that detainee was an "enemy combatant," "unlawful enemy combatant," "high-value detainee," "person under control", or any other status while in U.S. custody or control;
- 2) All records concerning the transport of the detainee to U.S. custody; to or between secret or undisclosed prisons; and from such secret or undisclosed prison facilities to Guantánamo, including, but not limited to, agreements, communications or understandings with foreign countries; records of the transport itinerary; duration of the flight; and measures taken with respect to physically securing the detainee during transport;
- 3) All records relating to communications, interrogations, meetings, and interviews (referred to collectively as "interrogations") with the detainee while in the custody of foreign or U.S. governments, in Pakistani prison or jail, known military bases, including Guantánamo, and secret or undisclosed prison locations, including:
- a) Any statements made by the detainee;
 - b) Any transcriptions of the interrogations;
 - c) Any photographs, video, audio, digital, or other contemporaneous recordings of the interrogations;
 - d) Any records concerning the conditions to which the detainee was subject during the interrogations;
 - e) All records concerning physical or psychological treatment of the detainee during interrogations;
 - f) All records concerning treatment of the detainee by interrogators or guards, including, but not limited to, any plans, instructions, orders, guidance or procedures governing interrogations, and any records of any person objecting to or refusing to comply with such instructions;
 - g) All records concerning the involvement of physicians, psychiatrists, psychologists or other medical personnel in any aspect of the interrogations;
 - h) Any records concerning the mental or physical condition of the detainee before, during or after interrogations;
 - i) Any records containing, or in any way relating or referring to, information provided by or derived from information obtained from the detainee;
 - j) All records containing information supplied by military or Central Intelligence Agency ("C.I.A") intelligence officers, interrogators at

Guantanamo, the Joint Intelligence Group, or the Federal Bureau of Investigation ("F.B.I.") concerning the detainee;

- k) Any records containing, or in any way relating or referring to, interrogation protocols, guidelines, approvals, authorizations, or operating procedures.
- 4) All records concerning physical or psychological treatment of the detainee, including, but not limited to:
- a) use of shackles (i.e., short-shackling);
 - b) stress positions (i.e., forcing the detainee to hold specific body positions for extended periods of time) or "long time standing" or "walling";
 - c) hooding;
 - d) "manhandling;"
 - e) solitary confinement;
 - f) use of psychoactive drugs;
 - g) modulation of temperature and/or exposure to weather elements, including "cold cell";
 - h) withholding of food or water;
 - i) use of dogs;
 - j) explicit or implicit threats to the detainee or his family;
 - k) body cavity searches, stripping, and/or forced nudity;
 - l) sleep deprivation;
 - m) sensory deprivation or sensory overload;
 - n) withholding or damaging the Koran;
 - o) any form of "closely guarded" interrogation techniques;
 - p) physical pressure or abuse, including the "attention grap," the "attention slap," the "shoulder slap," or the "belly slap";
 - q) waterboarding, a mock execution technique which provokes feelings of drowning; or
 - r) any other form of torture and cruel, inhuman or degrading treatment, or torture;
- 5) All records relating to detainee's conditions of confinement, treatment and/or interrogations while imprisoned in secret or undisclosed locations, including:
- a) Records concerning the decision to place detainee in a secret or undisclosed prison facility, or to continue his detention in such a facility;
 - b) Records concerning the location(s) of the facility or facilities in which the detainee was held in secret;
 - c) Dossiers on detainee's treatment, interrogation program or conditions of confinement;
 - d) Communication between different governmental entities or officials and/or private contractors concerning the treatment, interrogation program or conditions of confinement of detainee;
 - e) Records concerning information gleaned from detainee while in secret or undisclosed prison facilities; and
 - f) Records of the interrogations of other detainees in secret or undisclosed

prison facilities which concern or mention Majid Khan;

- 6) All records concerning Majid Khan in statements made by other detainees in U.S. or foreign custody, or by terrorist suspects;
- 7) All records concerning the detainee that contain information supplied by persons who monitor the treatment or interrogations of detainees, including records concerning any contact, communication, or interaction between any government personnel, special forces unit, or private contractors and the detainee;
- 8) Medical records and any other information concerning the physical or mental health of the detainee, his treatment requests or treatment while in U.S., Pakistani, or other foreign custody, and/or the involvement of physicians, psychiatrists, psychologists or other medical personnel in any aspect of his detention and/or interrogation;
- 9) All records concerning any contact, communication, or interaction between the International Committee for the Red Cross ("Red Cross"), or any other non-governmental organization, private contractors, or company and the detainee, including, but not limited to, records related to decisions to grant or deny the Red Cross access to the detainee;
- 10) All records concerning access to the detainee granted or denied to foreign governments, including, but not limited to, records relating to visits from representatives of Pakistan during any period of the detainee's imprisonment;
- 11) Records concerning communications between the U.S. government and the government of Pakistan or any person or organization in Pakistan concerning the detainee;
- 12) All records concerning allowing or withholding communications between the detainee and his attorney, family and/or home country government.
- 13) Correspondence and records between U.S. government entities or individuals regarding immigration, asylum, or residency status of detainee;
- 14) Correspondence and records concerning the detainee's family members – Ali S. Khan (father); Mahmood Khan (brother); Sadia Khan (sister); Wafaa Khan (sister); Gufran Khan (sister); Mohammed Khan (brother); Ahmad Khan (brother), and Rabia Khan (wife) – including:
 - a) Records concerning immigration, asylum, residency or citizenship status and processes of family members, or concerning their presence in the United States;
 - b) Records concerning the surveillance of family members inside or outside of the United States;
 - c) Records concerning the interrogation of family members by U.S. and/or

- Pakistani authorities;
- d) Records concerning the detention of family members inside or outside of the United States;
- e) Records concerning the family members' requests for, or access to, information regarding Majid Khan, or to Majid Khan himself; and
- f) Records concerning the family members' participation in the CSRT of Majid Khan.

II. The Requester

The Center for Constitutional Rights ("CCR") is a not-for-profit, public interest, legal, and public education organization that engages in litigation, public advocacy, and the production of publications in the fields of civil and international human rights. CCR also publishes newsletters, know-your-rights handbooks, and other similar materials for public dissemination. CCR has published reports on various aspects of U.S. detention in the "war on terror," at Guantánamo and elsewhere. These and other materials are available through CCR's Development and Education & Outreach Departments. CCR operates a website, www.ccrjustice.org, which addresses the issues on which the Center works. The website includes material on topical civil and human rights issues and material concerning CCR's work. All of this material is freely available to the public. In addition, CCR issues press releases and operates a listserv of over 42,000 members that issues "action alerts" that notify supporters and the general public about developments and operations pertaining to CCR's work.

III. Fee Waiver

CCR qualifies as a "representative[]" of the news media" and the requested records are not sought for commercial use. Accordingly, we request a waiver of fees on the grounds that disclosure of the requested records is in the public interest and because disclosure "is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester[s]." 5 U.S.C. § 552(a)(4)(A)(iii). Disclosure in this case meets the statutory criteria, and a fee waiver would fulfill Congress's legislative intent in amending FOIA. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers for noncommercial requesters'") (citation omitted).

The public has an interest in being informed about the processes by which the U.S. has detained people in connection with the "war on terror," and the conditions and treatment of detainees in U.S. custody, to ensure its representative government is not acting in ways contrary to domestic and international law and public demands. The information requested will benefit the public understanding of the operations or activities of the government.

Alternatively, we request a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) ("[f]ees shall be limited to reasonable standard charges for document

duplication when records are not sought for commercial use and the request is made by . . . a representative of the news media”) and 32 C.F.R. § 286.28(e)(7) (“search and review fees shall be limited to duplication fees for the first 100 pages for “representatives of the news media”). CCR is an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” *National Security Archive v. Department of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). As a “representative of the news media,” we fit within this statutory and regulatory mandate. Therefore, fees associated with the processing of this Request should be limited accordingly, if not waived entirely.

IV. Expedited Processing

We request expedited processing of this matter. Expedited processing is warranted when an organization “primarily engaged in disseminating information in order to inform the public about an actual or alleged Federal Government activity” has an “urgent need” to secure the records. 32 C.R.F. § 286.4(d)(3)(ii). CCR is an organization “primarily engaged in disseminating information” about government misconduct through the work of its staff, Board, and volunteer, cooperating, and co-counsel attorneys. As described above, CCR engages in litigation, public advocacy, and educational programming to defend constitutional and human rights law. Dissemination of information to the public is a crucial component of CCR’s mission and work. Specifically, CCR publishes reports and newsletters, maintains a public website, issues press releases, and offers educational materials, and programming to the public within the United States and internationally. Additionally, CCR’s staff, Board, and volunteer, cooperating and co-counsel attorneys further disseminate information through press releases, interviews, reports, educational programming and other means.

A Requester may also demonstrate compelling need by a showing that the information sought is “urgently needed” and involves a “breaking new story of general public interest.” 32 C.R.F. § 286.4(d)(3)(iii). Numerous congressional committees are conducting inquiries into the nature of U.S. interrogation and detention practices and nominees for various government positions, including Attorney General of the United States, continue to be asked about the involvement with the approval of prior U.S. interrogation policies and their position on the legality of current practices. The Government has withheld crucial information about its interrogation practices. Information about Majid Khan’s detention and interrogation is urgently needed to inform this debate and afford the U.S. public an opportunity to hold officials accountable for undesirable or illegal conduct.

Finally, a Requester can also demonstrate compelling need by a showing that the information sought is “urgently needed” and involves “the loss of substantial due process rights.” 28 C.F.R. § 16.5(d)(iii). Here, the denial of the detainee’s substantial due process rights is present and on-going. The detainee is one of fourteen ghost detainees who President Bush acknowledged that the U.S. detained in CIA secret prison facilities and subjected to “enhanced interrogation techniques” over a period of several years

before his September 2006 transfer to the U.S. Naval Base in Guantánamo Bay, Cuba. The detainee has been held in U.S. custody since March 5, 2003, more than four and a half years. During the majority of that time, he was held in secret detention facilities – literally “disappeared” – and subjected to coercive interrogation techniques. He has not been charged with a crime and the government has asserted that it can detain him indefinitely without charge. The compelling nature of the need for information about Majid Khan’s detention, and his loss of substantial due process rights as a result of U.S. government policy and practice, could not be clearer.

* * *

If our request is denied in whole or part, we ask that you justify all deletions by reference to specific exemptions of the FOIA. We expect you to release all segregable portions of otherwise exempt material.

Thank you for your prompt attention to this matter.

Yours sincerely,

Emi Maclean
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012
Tel: (212) 614-6424